

V.D., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Pulaski, TN, Employer**

Case Submitted on the Record

Before:

JURISDICTION

ISSUE

¹ 5 U.S.C. §§ 8101-8193.

² The record contains a September 10, 2013 decision of OWCP affirming the May 14, 2013 decision. Appellant filed her appeal with the Board on September 9, 2013 and under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), OWCP's September 10, 2013 decision, issued while the Board had jurisdiction over the matter in dispute, is null and void. See *Linda Thompson*, 51 ECAB 694 (2000).

FACTUAL HISTORY

On September 20, 2011 OWCP accepted that appellant, then a 54-year-old rural mail carrier, sustained bilateral thumb osteoarthritis and bilateral thumb synovitis due to the repetitive motions required by her job over the years. Appellant continued to work for the employing establishment in a limited-duty position.

On October 11, 2011 and on March 20, 2012 Dr. Alton L. Hunter, Jr., an attending Board-certified orthopedic surgeon, performed left and right thumb carpometacarpal (CMC) arthroplasty with ligament reconstruction graft transfer respectively. Both procedures were authorized by OWCP.

In an October 31, 2012 report, Dr. Hunter provided an assessment of appellant's postsurgery bilateral thumb condition. He detailed findings on examination, noting that no pain was reported with grind testing or CMC shucking.³ Range of motion in both thumbs was reported as normal. Dr. Hunter conducted an impairment rating evaluation and concluded that appellant had a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). He indicated that appellant had reached maximum medical improvement in both hands. For the left hand, under Table 15-2 on page 394 of the sixth edition of the A.M.A., *Guides*, appellant had a 26 percent digit impairment using the diagnosis-based rating method for thumb CMC arthroplasty. Dr. Hunter indicated that this calculation incorporated grade modifier findings on the left: grade 1 for functional history, grade 1 for physical examination and grade 1 for clinical studies. He stated that, under Table 15-11 on page 421, the 26 percent digit impairment corresponded to a 10 percent impairment rating for the left hand. For the right hand, under Table 15-2, appellant had a 26 percent digit impairment using the diagnosis-based rating method for thumb CMC arthroplasty. This calculation incorporated grade modifier findings on the right: grade 2 for functional history, grade 1 for physical examination and grade 1 for clinical studies. Dr. Hunter noted that, under Table 15-11, the 26 percent digit impairment corresponded to a 10 percent impairment rating for the right hand.

In April 2013, appellant filed a claim for a schedule award due to her accepted work conditions.

On May 7, 2013 an OWCP medical adviser stated that he reviewed the medical evidence, including the October 31, 2012 report of Dr. Hunter. He explained that he agreed with Dr. Hunter's impairment rating methods and indicated that appellant had a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand under the sixth edition of the A.M.A., *Guides*.

In a May 14, 2013 decision, OWCP granted appellant a schedule award for a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand. The award ran for 48.8 weeks from October 31, 2012 to October 7, 2013.

³ The record contains the results of a functional capacity evaluation conducted in October 2012.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. For the complete loss of a hand, FECA provides 244 weeks of compensation.⁶ Compensation for partial losses is proportionate.⁷ FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁸ For OWCP decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) is used for evaluating permanent impairment.⁹

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the thumb, reference is made to Table 15-2 (Digit Regional Grid: Digit Impairments) beginning on page 391. After the Class of Diagnosis (CDX) is determined from the Digit Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral thumb osteoarthritis and bilateral thumb synovitis due to the repetitive motions required by her job. On October 11, 2011 Dr. Hunter, an attending Board-certified orthopedic surgeon, performed a left thumb CMC

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.* at § 8107(c)(3).

⁷ *Id.* at § 8107(c)(19).

⁸ *Id.*

⁹ See FECA Bulletin No. 9-03 (issued March 15, 2009). For OWCP decisions issued before May 1, 2009, the fifth edition of the A.M.A., *Guides* (5th ed. 2001) is used.

¹⁰ See A.M.A., *Guides* 405-11 (6th ed. 2009). Table 15-2 also provides that, if motion loss is present for a claimant who has undergone a thumb arthroplasty, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis impairment. *Id.* at 394, 465-68.

¹¹ *Id.* at 23-28.

arthroplasty and, on March 20, 2012, he performed a right thumb CMC arthroplasty. In a May 14, 2013 decision, OWCP granted appellant a schedule award for a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand. The award ran for 48.8 weeks from October 31, 2012 to October 7, 2013. The schedule award was based on an October 31, 2012 impairment rating calculation of Dr. Hunter as confirmed by a report from an OWCP medical adviser.

The Board finds that appellant has not shown that she has more than a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand. Dr. Hunter conducted a proper impairment rating evaluation under the standards of the A.M.A., *Guides* and concluded that appellant had a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand. For the left hand, under Table 15-2 on page 394 of the sixth edition of the A.M.A., *Guides*, appellant had a 26 percent digit impairment using the diagnosis-based rating method for thumb CMC arthroplasty. Dr. Hunter properly devised grade modifiers on the left (grade 1 for functional history, grade 1 for physical examination and grade 1 for clinical studies) and applied the net adjustment formula.¹² He stated that, under Table 15-11 on page 421, the 26 percent digit impairment corresponded to a 10 percent impairment rating for the left hand. For the right hand, under Table 15-2, appellant had a 26 percent digit impairment using the diagnosis-based rating method for thumb CMC arthroplasty. Dr. Hunter reported grade modifiers (grade 2 for functional history, grade 1 for physical examination and grade 1 for clinical studies) and applied the net adjustment formula. Under Table 15-11, the 26 percent digit impairment corresponded to a 10 percent impairment rating for the right hand.

Moreover, an OWCP medical adviser stated on May 7, 2013 that he agreed with Dr. Hunter's impairment rating methods and indicated that appellant had a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand.

On appeal, appellant alleged that she was entitled to more than 48.8 weeks of compensation, but she did not submit evidence showing entitlement to a greater amount of schedule award compensation. Under FECA, 244 weeks of compensation is paid for complete loss of a hand and compensation for partial losses is proportionate.¹³ Given that appellant has a 10 percent impairment in each hand (20 percent total for both hands) it was appropriate that she received proportionate compensation for her partial loss in the amount of 48.8 weeks.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹² See *supra* note 10.

¹³ See *supra* notes 6 and 7.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board